



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cottonwood Technology Corporation

File: B-239209

Date: August 6, 1990

William E. Richards, Sr., for the protester.
George C. Chiang, Ph.D., for CMC Associates, Inc., an
interested party.
S. Lane Tucker, Esq., Office of the General Counsel, General
Services Administration, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's
proposal as unacceptable and the exclusion of proposal from
the competitive range is denied where review of agency's
technical evaluation of proposal shows it was evaluated in
accordance with solicitation's evaluation criteria and that
agency reasonably concluded that the proposal would require
major revisions to become acceptable.

DECISION

Cottonwood Technology Corporation protests the evaluation of
its proposal and its exclusion from the competitive range
under request for proposals (RFP) No. NKS90008, issued by
the General Services Administration for construction quality
management services related to the construction of a new
federal building and courthouse in Kansas City, Kansas.
Cottonwood contends that the agency unfairly evaluated its
proposal and failed to give the protester the opportunity to
correct deficiencies in its proposal.

We deny the protest.

The RFP called for the submission of cost and technical
proposals and provided that the offerors' proposals would be
evaluated on the basis of technical criteria and price to
determine which proposal offered the greatest value to the
government. With respect to the relative importance of the
evaluation criteria, the RFP instructed offerors that price

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was not as important as the technical evaluation criteria, which included, in descending order of importance, the qualifications of the offeror's organization, the qualifications of the proposed personnel, and the proposed preliminary management plan. Offerors were advised that the evaluated cost or price of the proposals would become more important as proposals became more equal in technical merit.

In response to the solicitation, the agency received 12 initial proposals. The proposals were evaluated by the source selection evaluation board which determined that 10 of the proposals were technically acceptable. Two proposals, including Cottonwood's proposal which was ranked the lowest of all technical proposals and tenth lowest for price, were eliminated from the competitive range. The agency found Cottonwood's proposal technically deficient in numerous areas requiring major revisions, and determined that in light of the protester's high price and comparatively weak technical proposal there was no reasonable expectation for award to the firm. The protester was informed by letter of February 12, 1990, that its proposal was unacceptable and would no longer be considered for award. Cottonwood then requested a debriefing, but was informed that a debriefing would only be held after contract award. Cottonwood filed its protest with our Office on April 6.^{1/} The agency has advised us that due to an urgent and compelling need for these services, it awarded a contract on June 12 to CMC Associates, Inc., which submitted a higher rated technical proposal and a lower price than that proposed by Cottonwood.

Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range. Federal Acquisition Regulation (FAR) § 15.609(a) (FAC 84-16). In reviewing allegations of improper evaluations and competitive range determinations, our Office will examine the record to determine whether the agency's judgment was reasonable and in accord with the

^{1/} The agency contends that Cottonwood's protest should be dismissed as untimely because it was filed more than 10 working days after the firm was notified, by letter of February 12, that its proposal was excluded from the competitive range due to price and other factors. We disagree. The February 12 letter did not state the reasons for excluding Cottonwood's proposal from further consideration in sufficient detail to provide Cottonwood a basis of protest.

solicitation's evaluation criteria. W.N. Hunter & Assocs.;
Cajar Defense Support Co., B-237259, B-237259.2, Jan. 12,
1990, 90-1 CPD ¶ 52.

The agency contends that it reasonably determined Cottonwood to be outside the competitive range after a thorough review of the firm's proposal and a comparison of the firm's low technical score and high price to the other lower priced offerors' scores. The agency states that Cottonwood's proposal was eliminated from the competitive range primarily because the proposal failed to adequately address several of the RFP's requirements, and lacked sufficient detail regarding the firm's past performance on any similar projects and its proposed management plan.^{2/}

We have examined the record with respect to the evaluation of Cottonwood's proposal and find that the agency reasonably excluded the firm from the competitive range on the basis of that evaluation. First, as stated above, the RFP clearly provided that the firm's qualifications constituted the most important technical evaluation factor. As such, offerors were specifically instructed to provide detailed information regarding similar projects performed by the firm or its proposed consultants within the past 5 years, and to discuss the similarities and dissimilarities of prior projects. In response, Cottonwood admits that since it did not have experience identical to the requirements of this project, it provided general information on many of its past projects in an attempt to establish relevant experience through similarities in scope or dollar amount of its other projects. We find, however, that the agency reasonably found deficient Cottonwood's proposal for relying on a courthouse construction project performed over 30 years ago, which experience was not eligible for consideration under the terms of the RFP. Although the protester briefly outlined its experience on a radio transmitting facility project involving design and management services, and on other industrial power plant and defense industry projects, we agree with the agency that such experience does not adequately establish the building and courthouse construction experience required for the

^{2/} To the extent that Cottonwood now protests an alleged lack of specificity in the solicitation's requirements and evaluation scheme, such protest is untimely and not for our consideration since it involves alleged improprieties in the solicitation apparent prior to the closing date for receipt of proposals, which were not protested prior to the closing date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990).

present project. In fact, Cottonwood failed to discuss the similarities and dissimilarities of those projects to this procurement, as required, and thus did not establish the relevancy of the experience. Further, the agency reasonably found deficient the proposal for failing to provide sufficient detail about the past projects and experience of the protester's proposed consultant, a large mechanical/industrial construction contractor which would provide substantial support to Cottonwood.

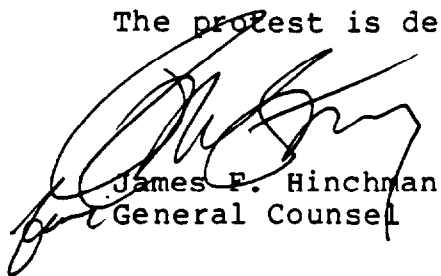
Second, regarding the qualifications of proposed personnel, the RFP required detailed resumes for specific key personnel including the construction executive, quality control superintendent, and the design and site staff, which included engineers and an elevator inspector. Cottonwood failed to provide required information about the years of relevant experience of at least two key engineering staff members, and the firm did not submit the name and resume of its proposed elevator inspector, also a key individual. The agency also found that the experience of the proposed staff was primarily in the area of mechanical, industrial design inspection, not in building design and construction. We find that the agency reasonably determined the firm deficient regarding these personnel requirements. The RFP also required a proposed continuity plan to minimize personnel shifts and losses during the approximately 4 year projected construction period. Cottonwood merely acknowledged that such losses will occur and stated that it would hire additional personnel to meet its needs. It offered no specific information on how it would minimize personnel shifts or losses to ensure staffing continuity. We find reasonable the agency's conclusion that Cottonwood's proposal was deficient regarding personnel requirements.

Finally, with regard to the RFP's requirement for a detailed preliminary management plan, including a staffing plan, the protester's proposal offered a very general outline of project scope and scheduling and proposed an extremely high number of man-hours, especially in the design phase of the project where Cottonwood's calculations were almost 600 percent more than the government estimate. Although Cottonwood's proposal provided a general schedule of work to be performed under each phase of the work project, this information was essentially contained in the RFP. Cottonwood failed to elaborate on the RFD schedule. While Cottonwood provided manpower estimates for each task, it did not substantiate these estimates. Again, we find the agency's evaluation reasonable.

Despite the protester's disagreement with the agency's judgment, based on the above, we find that the agency's

evaluation of Cottonwood's proposal was reasonable and conducted in accordance with the RFP's stated criteria. Since the agency reasonably concluded that the proposal would require major revisions, including possible substitution of its proposed subcontractor and other staff to meet RFP requirements as well as a rewrite of its management and continuity plans to become acceptable, and since its cost was the tenth highest, we conclude that Cottonwood was properly excluded from the competitive range. Accordingly, contrary to the protester's contention, the agency was not required to give Cottonwood an opportunity to correct the deficiencies in its proposal before rejecting it. Allied Management of Texas, Inc., B-232736.2, May 22, 1989, 89-1 CPD ¶ 485.

The protest is denied.



James F. Hinchman
General Counsel